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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,011	01/29/2001	Nan Feng	JP919990263-US1	9243
7590	12/01/2004		EXAMINER	
Anne Vachon Dougherty 3173 Cedar Road Yorktown Heights, NY 10598			CHOWDHURY, AZIZUL Q	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/772,011	FENG ET AL. 
	<b>Examiner</b>	<b>Art Unit</b>
	Azizul Choudhury	2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 03 September 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 29 January 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

***Detailed Office Action***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballard (US Pat No: 6,078,960).

1. With regards to claims 1, 11 and 20, Ballard teaches a method (a method is able to be an apparatus and a program) for balancing load among a plurality of mirror servers, wherein a user may select and get access to any one of said plurality of mirror servers within an identical web page, said method comprising the steps of:
  - a. When said web page is access by a client, transmitting not only said web page but also a predetermined script to said client;
  - b. Automatically executing said script at said client so as to respectively create connections with each of said plurality of mirror servers and measure respective response times;
  - c. Selecting a mirror server having the shortest response time for the user to access

(Ballad teaches a design for a client side load balancing (column 1, lines 43-50, Ballard). Clients receive a load balance list from the server they first access and the clients execute selection functions using the load balance list (equivalent to the claimed script) to determine and select the server with the least load). There are numerous servers the clients are able to select from, which have the same data amongst them hence, the servers are mirror servers (column 1, lines 51-52, Ballad)).

2. With regards to claims 2 and 12, Ballard teaches the method (a method is able to be an apparatus) wherein said predetermined script is transmitted together with said web page to said client (Servers are able to perform various tasks, serving as web servers is one such ability. The servers of Ballard's design are able to work in networks such as the Internet and hence means are present for the servers to serve as web servers (column 5, lines 12-41, Ballard). In addition, clients receive a load balance list (script) from the server they first access (column 1, lines 43-50, Ballard). Hence, means for the claimed step are present within Ballard's design).
3. With regards to claim 3, Ballard teaches the method wherein said automatically executing script comprises the steps of:
  - a. Calling a predetermined engine by said client; and

- b. Executing said script by said engine, comprising creating connections with each of said plurality of mirror servers and measuring respective response times (The load balance list (script) of Ballard's design is executed automatically by the client when it is received (column 1, lines 43-50, Ballard). It is inherent that an engine is present since the list is executed).
4. With regards to claims 4 and 13, Ballard teaches the method (a method is able to be an apparatus) wherein said executing said script is performed in a multi-thread manner for said plurality of mirror servers (The load balance list (script) of Ballard's design is executed automatically by the client when it is received (column 1, lines 43-50, Ballard). Processors execute processes in a multithreaded manner and the clients and servers of Ballard's design must use processors).
5. With regards to claims 5 and 14, Ballard teaches the method (a method is able to be an apparatus) further comprising sending the client information to the mirror servers being connected (Data within computers of a network are accessible by other computers within the network (granted they have access permission). The same applies to Ballard's design (column 4, lines 15-17, Ballard)).
6. With regards to claims 6 and 15, Ballard teaches the method (a method is able to be an apparatus) wherein said client information includes at least one of IP

address, domain name, platform name, platform version, and browser type of said client (In a network, when a client accesses a server, it sends data packets with information about itself. This is done to allow server to properly serve a client request by sending data in a format usable by the client. This is particularly true when a client uses a web browser to access a web server. The browser sends information such as IP information, platform information and the others claimed to the server so that the server is able to serve the client properly. Such means are present within Ballard's design since the design allows for use within an Internet setting (column 5, lines 12-41, Ballard)).

7. With regards to claims 7 and 16, Ballard teaches the method (a method is able to be an apparatus) wherein said connections are created through proxies (Web devices that make connections (such as networked clients and servers) are forms of proxies. Ballard's design makes use of networked clients and servers).
  
8. With regards to claims 8 and 17, Ballard teaches the method (a method is able to be an apparatus) wherein said script can be re-started by said user (The load balance list is updatable (column 2, lines 5-17, Ballard). When the client accesses the server, the list is re-obtained. The user controls the client and makes the client make its request. Hence, the claimed feature exists within Ballard's design).

9. With regards to claims 9 and 18, Ballard teaches the method (a method is able to be an apparatus) further comprising comparing respective response times of said plurality of mirror servers (Ballard's design has the client determine which server to access based on loads (column 1, lines 43-50, Ballard). Response time data is comprised within load data).

10. With regards to claims 10 and 19, Ballard teaches the method (a method is able to be an apparatus) further comprising the steps of:

- a. Notifying said user of the mirror server having the shortest response time;
- b. Receiving user input selecting one of said mirror servers as the selected mirror server; and
- c. Establishing access for the user to the mirror server

(Ballard's design has the client determine which server to connect to based on load levels (column 1, lines 43-50, Ballard). The server sends the load balance list to the clients).

### ***Remarks***

After careful review of the arguments presented within the amendment, the examiner agrees that the claimed invention does overcome the Davies prior art previously presented. The design claimed is a load balancing design where the load balancing occurs within the client. In response, the examiner has performed a new search and strongly believes that the Ballard prior art clearly illustrates how the claimed

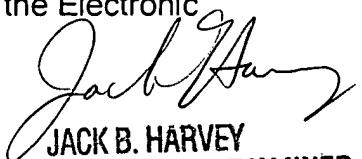
invention lacks novelty. In addition, the examiner would like to bring to the attention of the applicant and their representatives, another prior art discovered. That prior art is by Brendel (US Pat No: 6,182,139). It too teaches a client side load balancing design. Should there be any further details that the applicant and the applicant's representatives would like to include to overcome this rejection, they are encouraged to amend the claims and the application to reflect such details.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (571) 272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JACK B. HARVEY  
SUPERVISORY PATENT EXAMINER

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